

### **REMARKS**

This responds to the Final Office Action mailed on June 15, 2005.

Claims 1-3 are amended, claims 4-17 are added, and no claims are canceled; as a result, claims 1-17 are now pending in this application.

#### **§102 Rejection of the Claims**

Claim 1 was rejected under 35 U.S.C. § 102(e) as being anticipated by Chao et al (U.S. Patent No. 6,438,705). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim*.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Applicant respectfully submits Chao does not anticipate the claims as amended because Chao does not disclose each and every element of claims 1 and 2. Claims 1 and 2 as amended recite using a proposal message and a commit message to determine process membership in a group of processes which are eligible for failure detection and migration. Applicant has reviewed Chao and can find no reference to communicating group membership using a proposal message and a commit message. As a result, Chao does not disclose each and every element of claims 1 and 2. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1 and 2.

Claim 3 was rejected for the same reasons as claim 2. Applicant respectfully submits that claim 3 is not anticipated for the same reasons as discussed above with respect to claim 2. Applicant respectfully requests the withdrawal of the rejection of claim 3.

*New Claims 4-17*

New claims 4-17 have been added in this response. Support for new claims 4-17 may be found throughout the specification and in particular on pages 25-30 of the specification. Applicant respectfully submits that no new matter has been added with the amendments.

New claims 4-17 depend, directly or indirectly, on claims 1-3, and are patentable over for the reasons argued above with respect to claim 1-3. These dependent claims are also patentable in view of the additional elements which they provide to the patentable combination.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

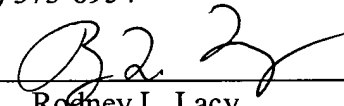
Respectfully submitted,

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Date December 15, 2005

By   
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 15<sup>th</sup> day of December, 2005.

JONATHAN FERRELLSON

Name



Signature